BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	**CS Docket No. 97-141**
Competition in Markets for the	)	
Delivery of Video Programming	)	
	)	
To: The Commission	)	
	)	

COMMENTS
OF
THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

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SUMMARY

The National Rural Telecommunications Cooperative ("NRTC") and its members market and distribute cable and broadcast programming to hundreds of thousands of rural households via satellite. They are Multichannel Video Programming Distributors ("MVPDs") under the Commission's rules. As NRTC has explained in many prior Comments to the Commission, its efforts to compete in the video delivery market continue to be hampered by certain rules, statutes and policies that favor the cable industry.

For instance, NRTC has argued for years that the Commission should strengthen its Program Access rules by awarding damages in appropriate cases. The Commission, however, has made it a policy not to award damages even after an aggrieved MVPD has proven after extensive Commission complaint proceedings that a program vendor has violated the Commission's Program Access rules by improperly overcharging for programming. Recently, Ameritech, as a new video provider, has faced the same problem and has been required to file a Petition for Rulemaking with the Commission, requesting the same type of relief. Unless the Commission makes it clear that damages will be imposed for violations of the Program Access rules, there will be no incentive for program vendors to comply with these rules. Vertically integrated cable programmers and satellite broadcast programming vendors will continue to have an unfair competitive advantage over other MVPDs.

Also of significant concern to NRTC are the existing copyright laws. Last year, in connection with the preparation of the 1996 Competition Report, NRTC pointed out to the Commission that there will never be full and effective competition in the market for the delivery of video programming until Congress amends the Copyright Act to remove the current prohibition against satellite retransmission of network signals to homes receiving a signal of Grade B strength from the local network affiliate. NRTC urged the Commission to recommend that Congress amend the Satellite Home Viewer Act ("SHVA") so that network signals can be provided to *all* households via DBS and other technologies. The Commission declined to take action, however, and in February 1997, Senator Orrin Hatch requested a full examination of this and related issues by the Copyright Office. In March 1997, the Copyright Office launched its review of current copyright laws, including the prohibition on satellite retransmission of network signals. The Commission should take the opportunity presented in its 1997 Cable Report to recommend elimination of the Grade B restriction and replacement with a system of surcharges that reflects network-affiliate exclusivity within a 35-mile zone.

NRTC also encourages the Commission to continue enforcement of its preemption policy regarding local zoning restrictions of DBS antennas, and to extend its preemption authority to include restrictions on the placement of antennas located on rental units and commonly-owned property. Because a significant percentage of Americans do not own their residences, they are not covered by the existing preemption rules. NRTC believes that *all* viewers, including those that do not own their residences,

should be given the freedom to choose their MVPD. The Commission should foster competition in the MVPD market by extending its preemption authority to protect renters and shared property owners.

Even though DBS has made substantial progress in recent years, it remains a nascent industry struggling to compete in the MVPD market. NRTC supports the reservation of 4% of a DBS provider's channel capacity for the carriage of non-commercial, educational and informational programming. NRTC urges the Commission not to impose additional, unnecessary public interest requirements on DBS providers, however, which will hinder the potential of DBS to compete effectively with cable.

Lastly, NRTC notes that the vast majority of electric cooperatives have established their pole attachment rates through negotiation. According to NRECA, most charge rates that are significantly less than the rates they must pay when they attach to poles owned by other entities. In light of the downward pressure on rates charged by electric cooperatives due to the fact that cooperatives are owned by their members, NRTC agrees with NRECA that the current exemption from federal pole attachment regulations should be retained for cooperatives.

NRTC urges the Commission to act quickly and strongly in these areas, to promote competition in the MVPD market and to foster a diversity of video programming sources throughout the country.

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COMMENTS OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

Pursuant to Section 1.430 of the Commission's Rules and Regulations, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Comments in response to the Notice of Inquiry in the above-captioned proceeding.[1/]

NRTC urges the Commission to strengthen its pro-competitive rules and policies in several key areas. First, full competition in the video delivery market cannot exist until the Commission's Program Access rules are amended to allow for the recovery of damages by aggrieved Multichannel Program Video Distributors ("MVPDs"). MVPDs who demonstrate that they have been overcharged for programming in violation of the Program Access rules should at a minimum be entitled to receive in damages the amount of their overpayments. Second, the current restriction in the Copyright Act preventing

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1/ Notice of Inquiry, 62 Fed. Reg. 38088 (released July 16, 1997) ("NOI").

satellite carriers from providing network programming to subscribers served by local network affiliates also should be eliminated. All subscribers should be able to receive network programming by satellite, and those residing within 35 miles of a local affiliate should be required to pay a surcharge to the affiliate that reflects the exclusivity obtained by the affiliate from the network. Third, NRTC supports the Commission's preemption of local governmental and private restrictions on the installation of satellite dishes. NRTC urges the Commission, however, to extend its policy to protect viewers who are renters or owners of common property. Fourth, NRTC requests that the Commission exercise restraint in imposing any new public interest requirements on DBS providers. DBS has made substantial progress in recent years, but is still a nascent industry when compared to cable. Lastly, NRTC agrees with NRECA that the current exemption from federal pole attachment regulations should be retained for member-owned cooperatives.

I. BACKGROUND

1. NRTC is a non-profit cooperative association comprised of 521 rural electric cooperatives and 231 rural telephone systems located throughout 48 states. NRTC's mission is to assist its members and affiliates in meeting the telecommunications needs of more than 60 million American consumers living in rural areas. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America, on an affordable basis and in an easy and convenient manner, just as those services are available over cable in more populated areas of the country. In short, NRTC seeks to ensure that

rural Americans receive the same benefits of the information age as their urban counterparts.

2. In 1992, NRTC entered into an agreement with Hughes Communications Galaxy, Inc., the predecessor in interest to DirecTV, Inc., to launch the first high-powered DBS service offered in the United States. NRTC members and affiliates invested more than $100 million to capitalize the first DBS launch, and in return received distribution rights for DirecTV programming ("DirecTV®") in specific regions of the country. NRTC, its members, and affiliated companies currently market and distribute up to 175 channels of popular cable and broadcast programming to more than 600,000 rural households equipped with 18" DBS receiving antennas. Additionally, using C-Band technology, NRTC and its members market and distribute packages of satellite-delivered programming called "Rural TV®" to some 70,000 home satellite dish ("HSD") subscribers throughout the country.

II. COMMENTS

3. Section 628(g) of the Communications Act requires the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming. The Commission is now preparing its fourth annual report to Congress ("1997 Competition Report"). The purpose of these reports is to assist Congress and the Commission in determining when there is competition sufficient to

reduce or eliminate many of the regulatory restraints imposed on the cable industry by the 1992 Cable Act.

4. At this point, true competition does not exist in the video delivery market due in part to several regulatory barriers imposed on cable's potential competitors. NRTC and its members, as MVPDs marketing and distributing cable and broadcast programming to hundreds of thousands of rural households via satellite, have confronted these barriers for years. NRTC has filed Comments and Reply Comments in all of the previous Commission Competition proceedings, as well as numerous other Commission proceedings, urging the FCC to amend its rules to enable robust competition to develop in markets for the delivery of video programming. Many of these issues, however, still remain unaddressed by the Commission.

5. For more than five years, NRTC has urged the Commission to award damages to aggrieved MVPDs that have followed the Commission's Program Access complaint procedures and established that they have been unlawfully overcharged for programming. Nevertheless, the Commission's Program Access rules still fail to contain damage provisions.

6. NRTC also has repeatedly noted the competitive disadvantages posed by the inability of DBS providers to offer network programming throughout the country. Last year, NRTC urged the Commission to recommend to Congress that the copyright

laws be changed to enable satellite carriers to provide network programming to all consumers, not just those not receiving Grade B signals from the local affiliates. While noting the problem in its 1996 Annual Report, the Commission has failed to take steps to correct it. Senator Hatch has now directed the Copyright Office to review the issue.

7. In Comments and Reply Comments submitted in preparation of the 1995 and 1996 Competition Reports, NRTC highlighted local zoning laws and other regulations unfairly restricting the placement of satellite antennas and thereby restricting the growth of the satellite video delivery industry. Last year, after the FCC adopted a policy to preempt private and governmental restrictions on the placement of satellite dishes, NRTC urged the FCC to enforce its new policy and extend the preemption policy to protect all consumers, including those who do not own their residences (e.g., renters or owners of common property). The matter, however, still remains pending at the Commission.

8. While it is true that the DBS industry has developed rapidly in the last four years, DBS has not yet come close to the level of penetration necessary to compete equally with the incumbent cable providers. As reflected in the 1996 Competition Report, DBS subscribership has increased to the point that DBS systems have a higher combined subscribership than any other MVPD alternative to incumbent cable systems.[2/]

2/ In the Matter of Assessment of the Status of Competition in the Market for the
(continued...)

However, the 1996 Competition Report also shows -- far and away -- that incumbent cable television operators continue to be the primary distributors of multichannel video programming; that local markets for the delivery of video programming remain highly concentrated; and that structural conditions remain in place for cable operators to exercise substantial market power.[3/]

9. Again this year, the Commission has requested parties to comment on existing statutory and regulatory provisions restraining competition or inhibiting development of robust competition in markets for the delivery of video programming. For DBS to compete effectively against incumbent cable television providers in the MVPD market, NRTC continues to urge the Commission to correct the impediments to competition already identified by NRTC in its previous filings in preparation of the Commission's earlier Competition Reports.

A. The FCC Should Award Damages for Violations of the Program Access Rules.

10. Section 119 of the 1992 Cable Act was enacted to increase competition and diversity in the multichannel video programming market, to increase the availability of satellite cable programming and satellite broadcast programming to persons in rural

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[2/] (...continued)
Delivery of Video Programming, CS Docket No. 96-133, Third Annual Report (released Jan. 2, 1997), at para. 38 ("1996 Annual Report"). See also Comments of DirecTV at 3.

[3/] Id. at para. 4.

and other areas not able to receive such programming, and to spur the development of communications technology.[4/] Congress was concerned that potential competitors to incumbent cable operators face unfair hurdles when attempting to gain access to the programming they need in order to provide a viable and competitive multichannel alternative to the American public.[5/] To that end, the 1992 Cable Act prohibited cable operators, satellite cable programming vendors in which a cable operator has an attributable interest, and satellite broadcast programming vendors from engaging in unfair methods of competition and unfair or deceptive acts or practices.[6/] The Commission also was charged with developing rules to prohibit unlawful price discrimination. To accomplish these objectives, the Commission was granted broad authority to "order appropriate remedies." 47 U.S.C. § 628(e)(1).

11. In April 1993, the FCC released its First Report and Order implementing the Program Access rules.[7/] The Commission announced that it did not believe that the 1992 Cable Act "grants the Commission the authority to assess damages against the programmer or cable operator" for a Program Access violation. It concluded that in most pricing discrimination cases "the appropriate remedy will be to order the vendor to revise

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4/ 47 U.S.C. § 548(a).

5/ 1992 Cable Act § 2(a)(4).

6/ 47 U.S.C. § 548(b).

7/ Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-265, First Report and Order, 72 RR2d 649 (1993) ("Program Access Order").

its contracts or offer to the complainant a price or contract term in accordance with the Commission's findings."[8/] It declined to adopt rules awarding damages for a violation of the Program Access rules.

12. On June 10, 1993, NRTC filed a Petition for Reconsideration of the Program Access Order, requesting that the Commission reverse its determination that it is not authorized by the 1992 Cable Act to award damages to an aggrieved MVPD for a violation of the Program Access rules.[9/] NRTC noted that Congress provided the FCC with ample authority to order all "appropriate remedies," and that damages have traditionally been regarded as an appropriate remedy for violation of the Commission's non-discrimination requirements.[10/] NRTC also noted that complaint proceedings may require a considerable amount of time for successful prosecution at the Commission and that during the pendency of the complaint, the programmer could continue to discriminate with impunity against the complaining MVPD. NRTC contended that it would be patently unfair to require the MVPD to continue paying the discriminatory rates with no hope of ultimately recovering those unfair payments from the programmer in the form of damages. Damages, NRTC argued, are completely warranted to make the aggrieved party whole, and are necessary to provide an incentive to program vendors to discontinue

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8/ Id. at ¶ 134.

9/ NRTC Petition for Reconsideration in MM Docket No. 92-265 at p. 6 (June 10, 1993).

10/ Id. at pp. 4-6.

their discriminatory pricing practices.[11/] NRTC's Petition received the support of the Bell Atlantic Telephone Companies, and the Consumer Federation of America, but was met with opposition from programming vendors and cable operators.[12/]

13. In response to NRTC's Petition for Reconsideration of the Program Access Order, the Commission reversed its earlier decision and concluded that it did in fact have "authority" to make an award for damages as a result of a Program Access violation. The Commission determined, however, that it was not "necessary" at that time to create such a remedy. Rather, the Commission decided to monitor its current processes and to revisit the issue if appropriate in the future.[13/]

14. A year later, the Commission revisited the Program Access rules in the context of revising its rules and policies for DBS service.[14/] The FCC requested comment on whether the existing Program Access rules adequately addressed vertical foreclosure concerns arising from integration among DBS operators, other MVPDs and program

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11/ Id. at 7.

12/ Oppositions to NRTC's Petition were filed by Discovery, Liberty Media, Superstar, Time Warner, United Video, Viacom and Landmark.

13/ Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Development of Competition and Order at § 17 (December 9, 1994) ("Program Access MO&O").

14/ Revision of Rules and Policies for the Direct Broadcast Satellite Service, Notice of Proposed Rulemaking, FCC 95-443, IB Docket No. 95-168, PP Docket No. 93-253 (October 30, 1995).

vendors, especially in connection with "headend in the sky" distribution from DBS satellites.[15/] NRTC once again argued that the Program Access rules should be amended to allow for the award of damages for a Program Access violation. The Commission declined to address the damages issue in the context of a rulemaking to revise rules and policies for DBS service, but noted that it would revisit this issue "[s]hould NRTC or any other party bring a complaint based on substantial evidence of a program access violation."[16/] NRTC, in fact, pursued four separate Unlawful Price Discrimination Complaints at the Commission, all without benefit of explicit recognition in the Commission's rules that NRTC could receive back from the program vendors any demonstrated overpayments paid in violation of the price discrimination requirements.[17/]

15. After four frustrating years of pleading with the Commission to award damages for violations of the Program Access rules, NRTC notes that Ameritech has now come to the Commission with essentially the same Program Access concerns raised by NRTC years ago. Ameritech, a new provider of video programming services under Title VI of the Communications Act, apparently has experienced similar difficulties in

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15/ Id. at ¶¶ 57-62.

16/ Revision of Rules and Policy for the Direct Broadcasting Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253, Report and Order, 11 FCC Rcd 9712 at ¶ 107, note 212 (December 15, 1995) ("DBS Order").

17/ See NRTC, Complainant v. Southern Satellite Systems, Inc. and Netlink USA, Defendants; NRTC v. United Video, Inc., Memorandum Opinion and Order, 7 FCC Rcd 3213 (1992).

obtaining access to certain vital cable programming.[18/] Not being able to obtain relief under the Commission's current procedures, Ameritech filed a Petition for Rulemaking on May 16, 1997, requesting that the FCC amend Section 628 to conform with the procompetitive purposes of the 1992 Cable Act. Specifically, Ameritech requested that the Commission award damages to "create the needed economic disincentives to discourage violation of Section 628 by cable operators and programmers."[19/] NRTC supports Ameritech's efforts to persuade the Commission to award damages for violation of the Program Access rules, and urges the Commission to revisit the damages issue, either in conjunction with Ameritech's pleading or separately.

16. It has been clear for years that the failure of the Commission to award damages for violations of the Program Access rules is thwarting competition in the MVPD market. NRTC has repeatedly characterized this deficiency in the Commission's Program Access rules as an economic disincentive for compliance, since violators are permitted to reap the monetary and competitive benefits achieved while they are in continuing violation of the Commission's rules. Fundamental fairness requires Program Access violators to disgorge their ill-gotten gains. Moreover, without the possibility of an award of damages following successful prosecution of a complaint at the Commission,

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18/ Ameritech Petition for Rulemaking at pp. 3-4 (filed May 16, 1997).

19/ Id. at pp. 1-2.

there is little practical incentive for an aggrieved MVPD even to pursue a remedy at the Commission.

17. Congress made it clear years ago that the Commission is authorized to impose "appropriate remedies" for Program Access violations. NRTC urges the Commission to step forward and exercise its authority to award damages to MVPDs aggrieved by a program vendor's unfair and illegal pricing practices.

B. Copyright Law Prevents DBS Service Providers from Being Fully Competitive in the Market for the Delivery of Video Programming.

18. As with the damages issue, NRTC has a long history with the Commission and with the Copyright Office of seeking changes to the current copyright laws to promote competition in the video delivery market. Under the Copyright Act, only "unserved households" may lawfully receive signals of network stations retransmitted for private home viewing via DBS. An "unserved household" is defined as one that cannot receive a signal of Grade B intensity from a local network station through the use of a conventional rooftop antenna and has not received the local network affiliate through a subscription to cable services within the previous 90 days.[20/]

20/ 17 U.S.C. § 119(a)(2).

19. Last year, NRTC filed Comments and Reply Comments in response to the 1996 Competition Report Notice of Inquiry, urging the Commission to recommend to Congress that these copyright restrictions on the provision of network programming by satellite carriers be eliminated so that network signals could be provided to all households via DBS and other satellite distribution technologies.[21/] NRTC noted that these restrictions create an unfair advantage for cable operators over DBS in the video delivery market. Many consumers, when faced with the choice of obtaining DBS or cable, will subscribe to cable simply because it offers network programming which DBS cannot, by law, provide.[22/]

20. While the Commission recognized NRTC's concern in the 1996 Competition Report, noting that DBS providers have found their inability to carry local broadcast signals to be a "competitive disadvantage," no action was taken.[23/] Rather than tackling this issue and making an appropriate recommendation to Congress, the Commission simply concluded that the Copyright Office, not the FCC, has jurisdiction over the current laws which prohibit DBS providers from offering network programming in "served" areas.[24/] The Commission made no recommendation to the Copyright Office or to Congress to change the status quo.

21/ NRTC Comments on 1996 Competition Report at p. 14.

22/ NRTC Reply Comments on 1996 Competition Report at p. 4.

23/ 1996 Competition Report at ¶ 48.

24/ 1996 Competition Report at ¶ 192.

21. On February 6, 1997, Senator Orrin Hatch, Chairman of the Committee on the Judiciary, requested that the Copyright Office conduct a global review of the copyright licensing regimes governing the retransmission of over-the-air broadcast signals.[25/] The Copyright Office was requested to develop legislative recommendations and to report to Congress on this issue by August 1, 1997.

22. The Copyright Office launched its review of the satellite and cable compulsory licenses through a Public Notice issued on March 20, 1997.[26/] In its Notice, the Office announced that it would conduct open public meetings and review comments and reply comments on compulsory licensing issues, including restrictions on the provision of network programming by satellite carriers.

23. On April 28, 1997, NRTC submitted Comments to the Copyright Office, arguing that the statutory restriction on the retransmission of network signals to "served" households should be eliminated from the SHVA; that network signals should be available via satellite to all consumers willing to pay for them; and that the network-affiliate relationship could be protected and local affiliates compensated through the imposition of a surcharge on the importation of distant network signals by satellite.

25/ See Letter of February 6, 1997 of Senator Orrin Hatch to the Register of Copyright Requesting Review of the Copyright Licensing Regime Governing the Retransmission of Over-the-Air Broadcast Signals. See 62 Fed. Reg. 13396 (March 20, 1997).

26/ 62 Fed. Reg. 13396 (March 20, 1997).

24. On May 8, 1997, NRTC's Chief Executive Officer, Bob Phillips, testified before a special Copyright Office panel regarding the impact of these restrictions on rural customers. Mr. Phillips testified that "Grade B signal strength" has no meaning to consumers who are "disenfranchised" and "frustrated" by the current, unworkable satellite compulsory license.[27/]

25. NRTC's Reply Comments, filed with the Copyright Office on June 20, 1997, provided an innovative and straightforward solution to the Grade B problem which reflects the original intent of Congress in adopting the SHVA: to promote the distribution of service while protecting the network-affiliate relationship. NRTC recommended that the Grade B signal strength standard be eliminated from the statute; that network signals be available to all consumers via satellite on a nationwide basis; and that affiliates receive a surcharge for satellite retransmission of network signals within a clearly defined, 35 mile exclusive geographic area measured from the affiliate's city of license reference point.

26. NRTC pointed out that the Grade B signal strength standard does not accurately reflect the geographic area over which a local affiliate holds network exclusivity. Affiliate exclusivity is based on geographic territory, not signal strength. The 35-mile zone, not "Grade B signal intensity," better represents the area for which

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27/ CRO Transcript of May 8, 1997, p. 515.

affiliates have been granted exclusivity by the networks through Network-Affiliate Agreements. The 35 mile benchmark also is used by the FCC to establish an affiliate's "territorial exclusivity" for non-network programming. 47 C.F.R. § 73.658(m). Additionally, network nonduplication rules, which are subject to the provisions of the Network-Affiliate Agreements, are often based on 35-mile zones from the FCC's reference point. 47 C.F.R. § 76.93.

27. Because the affiliate is actually entitled to exclusivity only within a specific geographic area (not based on "Grade B signal intensity"), a surcharge could be collected from the satellite carrier for the importation of distant network signals to consumers within that area and passed on to the local affiliate to compensate the affiliate for any perceived loss of viewership and advertising revenues. NRTC proposed that beyond the 35-mile zone, networks should compensate the satellite carriers for adding value to the network signal by increasing the audience reach of the networks beyond the area of affiliate exclusivity.[28/]

28. The current Copyright Law, as the Commission implicitly recognized in its 1996 Cable Competition Report, prevents DBS from being fully competitive with cable. The 1996 Telecommunications Act was passed by Congress in order to foster

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28/ Reply Comments of NRTC in Copyright Office Proceeding on the Revision of Compulsory Licenses, at p. 4. DirecTV supported NRTC's proposal in its Reply Comments to the Copyright Office's inquiry. Reply Comments of DirecTV, p. 8.

competition at all levels of the telecommunications market. The inability of satellite carriers to retransmit network signals to "served" households is clearly contrary to the procompetitive purposes of the 1996 Act.

29. As Congress is preparing to review the satellite and cable compulsory licenses, the opportunity is ripe for the Commission to present its recommendations to Congress on the anticompetitive effects of the current copyright laws. Network programming, despite the variety of new channels available in the video marketplace, is by far the most popular programming.[29/] When consumers are prevented from obtaining network programming through their satellite carrier, they are forced in some areas to subscribe to cable or to receive inadequate over-the-air service. This policy results in a significant loss of DBS subscribership and a continued, unfair competitive advantage for cable operators. Ultimately, it is the consumer who is disadvantaged by unnecessary restrictions on access to video programming.

30. The Commission should emphasize in its 1997 Annual Report that the current copyright laws are in conflict with the nation's pro-competitive telecommunications policies. The Copyright Act should be amended to allow for the satellite retransmission of network signals to all households, coupled with the payment of surcharges that reflects network-affiliate exclusivity within a 35-mile zone.

29/ 1995 Competition Report at ¶ 86.

C. Restrictive Local DBS Zoning Ordinances Must be Preempted.

31. In May 1995, the Commission initiated a proceeding to revise its rules concerning preemption of local zoning restrictions governing the placement of satellite antennas.[30/] In its Notice, the FCC proposed to review zoning disputes after exhaustion of all local administrative remedies. The Commission also proposed to allow zoning authorities to request waivers of the preemption rules. Finally, the Commission suggested new standards for determining the reasonableness of state and local regulations, and proposed new categories of rebuttable presumptions for small antennas. In response, NRTC filed Comments and Reply Comments urging the Commission to strengthen its rules to protect viewers from unnecessary restrictions on the placement of DBS antennas. Before the Commission issued preemption rules, however, Congress enacted the Telecommunications Act on February 8, 1996. Section 207 of the 1996 Act, which reflected many of the Commission's earlier proposals, requires the Commission to preempt all state and local regulations that interfere with the federal interest in ensuring access to DBS services. Specifically, the language directs the FCC to:

> promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service or direct broadcast satellite services.[31/]

30/ Notice of Proposed Rule Making, 60 Fed. Reg. 28077 (released May 15, 1995).

31/ 47 U.S.C. § 207.

32. On March 11, 1996, the Commission issued a Report and Order and Further Notice of Proposed Rulemaking implementing Section 207 of the 1996 Act. In the First R&O, the Commission stated that all state or local zoning regulations that affected the installation, maintenance, or use of satellite earth station antennas two meters or less in diameter in commercial areas and one meter or less in residential and other areas were presumed unreasonable and therefore preempted. The Commission implemented a new rule that only a demonstrable health or safety objective could rebut the presumption of unreasonableness and avoid preemption. Other new rules provided a procedure by which aggrieved parties could request the FCC to preempt a local zoning restriction once all non-federal administrative remedies had been exhausted.

33. In response to the Further Notice of Proposed Rule Making accompanying the First R&O, NRTC filed Comments and Reply Comments on April 15, 1996 and May 6, 1996, respectively. NRTC supported the Commission's proposal to preempt non-governmental restrictions, such as homeowners' association restrictions and deed covenants, against DBS satellite antennas.

34. The FCC released a Further Notice on August 6, 1996 proposing to extend its preemption rule to include renters and other individuals that do not exclusively control their residences.[32/] NRTC filed Comments and Reply Comments in that proceeding on

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32/ Preemption of Local Zoning Regulation of Satellite Earth Stations;

(continued...)

September 27, 1996 and October 28, 1996, respectively. NRTC urged the FCC to protect all viewers against zoning restrictions on satellite antennas, including those that are not fortunate enough to own outright their residential property.

35. In preparing its 1997 Competition Report, the FCC solicited comments on the effect implementation of Section 207 has had on competition in the markets for delivery of video programming. With only a small number of petitions for preemption filed at the Commission, three of which have been dismissed, it is too early to determine whether Section 207 has successfully eliminated a barrier to competition faced by DBS and other satellite providers.[33/] Nevertheless, NRTC applauds the Commission for following through on its proposals to protect viewers from restrictions that impair their ability to receive video programming via DBS, and urges the Commission to extend these same protections to those Americans who are not homeowners.

36. As noted by DIRECTV in its Reply Comments to the Further Notice in IB Docket No. 95-59, 27% of Americans live in multiple dwelling units ("MDUs") and 46%

[32/] (...continued)
Implementation of Section 207 of the Telecommunications Act of 1996 Restriction on Over-the-Air Reception Devices, IB Docket No. 95-59, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 5809 (1996).

[33/] NRTC notes and supports the Commission's recent preemption of an ordinance adopted by the City of Meade, Kansas restricting the installation and use of satellite dishes. Star Lambert and Satellite Broadcasting and Communications Association of America, Memorandum Opinion and Order, CSR 4913-0 (released July 22, 1997).